

*Application/Control Number: 10/091,360; filed 05-04-2002**Art Unit: 1631**Page 9 of 12*

III. REMARKS

Amendments Made Herein and Summary of Status of Claims:

Please amend claims 38 and 39, without prejudice. No new matter was introduced with the amendment. Currently, claims 13-18, 31-34, and 36-43 are pending in the application.

- **Statement with Respect to Scope of Amended and Non-Amended Claims**

Revisions to the claim set is made in order to streamline prosecution of this case in order to obtain early allowance of embodiments that are presently anticipated to be of commercial significance and are not made for a purpose of patentability. Any amendment, cancellation, withdrawal or addition made herein with respect to the claims should not be construed in any manner as indicating Applicants' surrender of any subject matter of the application, or surrender of any equivalent to any element asserted in one or more claims. Any narrowing which may be evinced with respect to subject matter covered by the claims as a whole, or by one or more claims of the appended claims whether amended, re-represented, or new, when compared to claims previously in the application, should not be interpreted as indicating that the Applicants have generally disclaimed the territory between the original claimed subject matter and the amended claimed subject matter. Amended claims elements are to be construed to include substantial equivalents known to those of ordinary skill in the art. Applicants assert that any amendments transacted herein are made without prejudice and reserve all rights to prosecute any canceled claims, and claim structures preceding any amendment to a particular claim, and other disclosed (but not presently claimed) embodiments in the application, in future continuation applications, divisional applications, continuation-in-part applications, continuing prosecution applications, requests for continuing examination, re-examination applications and any other application claiming priority to the present application.

CT01/HOFFHA/219323.1

*Application/Control Number: 10/091,360; filed 05-04-2002**Art Unit: 1631**Page 10 of 12*

RESPONSE TO REJECTIONS

Claim Rejections - 35 USC § 112

The Examiner's Position:

Claims 13-18, 31-34, 36-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, Claim 38 recites step (i), which includes digitally receiving a color image. The next step is one of transforming. However, this step is not included as a second step (ii), and therefore it is unclear if this procedure happens simultaneously with step (i) or if it is a separate step. Clarification is requested.

Claim 38 recites "predetermined selection criteria". This is unclear, as no criteria have been determined. What criteria does Applicant intend? Clarification is requested.

Claim 38 recites "predetermined selection criteria may be applied". It is unclear if this step is essential or not. Is it applied or is it not applied? Clarification is requested. Claim 38, step (iii), recites "for eliminating from the candidate blob". Is this a step or an intended result of the method? Clarification is requested.

Claims 38 and 39, in the preamble, recite "a method for rare cell image identification" and "computer directed steps to selectively identify a rare cell image", respectively. However, there is no actual step of "identification" in the claims. Clarification is requested.

Applicant's Response:

CT01/HOFFHA/219323.1

*Application/Control Number: 10/091,360; filed 05-04-2002**Art Unit: 1631**Page 11 of 12*

Claims 38 and 39 have been amended according to the Examiner's suggestions. It is believed that all ambiguities have been removed without introducing new matter.

Specifically, Applicant has defined step of 'transforming' as a second step, and renumbering the following steps as third, and fourth steps in the sequence. In the third step, rare cell image characteristic values may serve as predetermined rare cell image selection criteria. Finally 'for eliminating' is replaced by -- so as to eliminate-- and identify the rare cell image.

Applicant therefore respectfully requests reversal of the aforementioned rejection under the statute. Claims 13-18, 31-34, 36-37, and 40-43 are dependent from the amended base claims 38 or 39 and therefore also believed allowable.

CT01/HOFFHA/219323.1

Application/Control Number: 10/091,360; filed 05-04-2002

Art Unit: 1631

Page 12 of 12

CONCLUSIONS

An early notice of allowance in the next Office action is earnestly requested.

Respectfully submitted,

Date: September 20, 2005



Hans-Peter G. Hoffmann, PhD
Agent for Applicant, Reg. No. 37,352
Kelley Drye & Warren LLP
Two Stamford Plaza
281 Tresser Boulevard
Stamford, CT 06901
Tel.: 203-351-8011
Fax: (203) 327-2669
E-mail: hhoffmann@kelleydrye.com

C:\01\HOFFMAN\219323.1